

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

DAHEEM BRYANT-ROYAL,

*

Petitioner,

*

CRIMINAL No. WDQ 12-40

CIVIL No. WDQ 14-415

v.

*

UNITED STATES OF AMERICA

*

Respondent.

*

* * * * *

**GOVERNMENT'S RESPONSE TO PETITIONER'S MOTION UNDER
28 U.S.C. § 2255 FOR OPPORTUNITY TO APPEAL**

The United States of America, by and through its attorneys, Rod J. Rosenstein, United States Attorney for the District of Maryland and Rachel Miller Yasser, Assistant United States Attorney, respectfully submits the following response to the Petitioner's Motion to under 28 U.S.C. § 2255 for the opportunity to appeal. For the following reasons, Petitioner's request for an opportunity to appeal is unopposed.

On August 14, 2013, Petitioner was sentenced in the above-captioned criminal matter.

On September 5, 2013, a notice of appeal and docketing notice was filed with the Fourth Circuit by trial counsel, Joseph Owens. (U.S. v. Daheem Bryant Royal, No. 13-4653 (hereinafter "Fourth Circuit") at Docket 4, attached as Exhibit A). The docketing notice requires that initial forms are due within 14 days.

On September 14, 2013, Mr. Owens filed a motion to strike his appearance, citing, among other things, the fact that "Bryant-Royal desires appointment by an attorney in accordance with the Criminal Justice Act" and "The undersigned does not desire to be so appointed." (Fourth Circuit Docket 6, attached as Exhibit B)

On September 16, 2013, the Fourth Circuit, through its Deputy Clerk, issued a notice to Mr. Owens, informing him that “trial counsel’s representational obligations extend to assisting the defendant with perfecting the appeal,” and that “counsel’s motion to strike appearance will be deferred pending receipt by the court of the completed CJA 23 forms or appearance of new counsel.” (Fourth Circuit Docket 7-1 and 7-2 (enclosing forms), attached as Exhibit C)

Despite the representation that counsel’s motion to strike would be deferred pending receipt of the enclosed forms, including a status of counsel or waiver of right to counsel form, the Fourth Circuit granted counsel’s motion to withdraw from further representation on appeal on September 30, 2013, without receipt of the completed forms or the appearance of new counsel.¹ (Fourth Circuit Docket 10, attached as Exhibit E).

On October 18, 2013, the Fourth Circuit issued a Rule 45 Notice to Petitioner informing him that the court will dismiss the case for failure to prosecute unless, within 15 days, he pays his filing fee or CJA 23 Application to proceed under the Criminal Justice Act, and files his Status of Counsel form.² (Fourth Circuit Docket 12, attached as Exhibit F)

On November 7, 2013, the appeal was dismissed for failure to prosecute. (Fourth Circuit Docket 14, attached as Exhibit G)

The Government believes that the Fourth Circuit inadvertently sent conflicting messages when it both informed trial counsel of his obligation to assist Petitioner in perfecting the appeal, but also subsequently granted counsel’s motion to strike his appearance. As such, the Government believes the appropriate relief is to reinstate Petitioner’s right to appeal, directing that Petitioner fill out the Status of Counsel and CJA forms; and appointing counsel for the

¹ The Deputy Clerk sent the same notice as that contained in Dockets 7-1 and 7-2 regarding status of counsel to Petitioner on September 30, 2013, on the same date when trial counsel’s motion to strike appearance was granted. (Fourth Circuit Docket 9, Attached as Exhibit D).

² It is not clear to the Government where these notices were sent to Petitioner. According to the BOP, Petitioner began his sentence of incarceration at FMC Lexington on October 14, 2013.

limited purpose of assisting Petitioner in the filing of these forms and the reinstatement of Petitioner's appeal, within 30 days of that appointment.

Respectfully submitted,

_____/s/_____
Rachel M. Yasser
Assistant United States Attorney
District of Maryland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this Response to Petitioner's Motion Under 28 U.S.C. to Vacate, Set Aside, or Correct Sentence was filed using CM/ECF on April 3, 2014, and served Petitioner by first class mail and email:

Daheem Bryant-Royal
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_____/s/_____
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